

## I. INTRODUCTION

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## **II. JURISDICTION**

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA citizen suit provision) and 28 U.S.C. § 1331 (federal question).

## **III. VENUE**

3. Venue in this Court is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

## **IV. PARTIES**

4. Plaintiff, Wild Horse Freedom Federation, is a non-profit organization that, at all times relevant herein, has been headquartered in Magnolia, Texas.

5. Defendant Bureau of Land Management is federal agency of the United States, and sub-component of the United States Department of the Interior, and as such, is an agency subject to the FOIA, pursuant to 5 U.S.C. § 552(f).

## **V. LEGAL FRAMEWORK OF FOIA**

6. FOIA requires, *inter alia*, that all federal agencies must promptly provide copies of all non-exempt agency records to those persons who make a request for records that reasonably describes the nature of the records sought, and which conform with agency regulations and procedures in requesting such records. 5 U.S.C. § 552(a)(3)(A).

7. FOIA requires federal agencies to make a final determination on all FOIA requests that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such request, unless the agency expressly provides notice to the requester of “unusual circumstances” meriting additional time for

responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(I).

8. FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency expressly provides notice to the requester of “unusual circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii).

9. FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(I) - (ii). *See* 5 U.S.C. § 552(a)(6)(C).

10. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

11. Under FOIA, the federal agency has the burden to sustain its actions. 5 U.S.C. § 552(a)(4)(B).

12. Pursuant to FOIA, this Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in this action. 5 U.S.C. § 552(a)(4)(E).

## **VI. FACTUAL ALLEGATIONS**

13. On or about August 13, 2018, WHFF sent a FOIA request to the Bureau of

Land Management (BLM), seeking copies of all emails and faxes sent to and from Holle Waddell, the Off-Range Branch Chief for the BLM's Wild Horse & Burro Program, and copies of all email attachments sent to Holle Waddell, from August 6, 2018 to the date of this FOIA request.

14. On or about August 21, 2018, WHFF sent an email to BLM inquiring whether BLM had received WHFF's August 13, 2018, FOIA request, as well as requesting the estimated date when the agency would provide the requested records.

15. On or about August 28, 2018, WHFF sent another email to BLM, again inquiring whether BLM had received WHFF's August 13, 2018, FOIA request, as well as requesting an estimated date when WHFF could expect to receive the requested records.

16. On or about September 4, 2018, WHFF sent an email to BLM, indicating that WHFF had not yet received a FOIA number for its August 13, 2018, FOIA request.

17. On or about September 4, 2018, BLM sent an email to WHFF indicating that it would provide a response and update to WHFF's August 13, 2018, FOIA request.

18. On or about September 4, 2018, BLM sent an email to WHFF asking whether WHFF wanted to combine its August 13, 2018, FOIA request with another of WHFF's prior FOIA requests sent to that agency.

19. On or about September 4, 2018, WHFF sent an email to BLM indicating that it did not wish to combine its August 13, 2018, FOIA request with any prior record requests, and was still seeking a separate FOIA tracking numbers and an estimated

completion date for its August 13, 2018, FOIA request.

20. On or about September 19, 2018, WHFF again sent an email to BLM, requesting the FOIA tracking number and an estimated completion date for its August 13, 2018, FOIA request.

21. On or about September 19, 2018, BLM sent an email WHFF indicating that BLM had received WHFF's August 13, 2018, FOIA request, and was assigning it control number 2018-01276.

22. On or about October 22, 2018, Plaintiff WHFF sent an email to BLM, once again requesting the agency provide an estimated date of completion for WHFF's August 13, 2018, FOIA request.

23. On or about November 22, 2018, WHFF sent another email to BLM, again requesting the agency provide an estimated date of completion for WHFF's August 13, 2018, FOIA request.

24. On or about December 21, 2018, WHFF once again sent a follow-up email to BLM, requesting the agency provide an estimated date of completion for WHFF's August 13, 2018, FOIA request.

25. On or about February 27, 2019, WHFF sent an email to BLM clarifying that its August 13, 22108 record request was only seeking records for the period of August 6, 2018, through August, 13, 2018, and once again requested for an estimated date of when BLM would provide responsive records to WHFF's August 13, 2018, FOIA request.

26. On or about May 9, 2019, WHFF sent an email to BLM, once again inquiring whether BLM had an estimated date that it would provide responsive records to WHFF's August 13, 2018, FOIA request.

27. On or about June 12, 2019, WHFF sent an email to BLM, requesting an estimated date when BLM would provide responsive records to WHFF's August 13, 2018, FOIA request.

28. As of the date of the filing of this action Plaintiff WHFF has still not received any agency decision or any of the records which it requested in its August 13, 2018, FOIA request to the BLM.

## **VII. CLAIMS FOR RELIEF**

29. WHFF realleges, as if fully set forth herein, paragraphs 1-28 previously set forth herein.

30. Defendant BLM has violated FOIA by failing to provide WHFF with all non-exempt responsive records for its August 13, 2018, FOIA request.

31. By failing to provide WHFF with all non-exempt responsive record to its August 13, 2018, FOIA request described in paragraph 13 above, Defendant BLM has denied WHFF's right to this information as provided by the Freedom of Information Act.

32. Defendant BLM has violated FOIA by failing to perform an adequate search reasonably calculated to locate all responsive records to WHFF's August 13, 2018, FOIA request.

33. By failing to perform an adequate search reasonably calculated to locate all responsive records to WHFF's August 13, 2018, FOIA request, Defendant BLM has denied WHFF's right to this information as provided by law under the Freedom of Information Act.

34. Unless enjoined by this Court, Defendant BLM will continue to violate WHFF's legal rights to be provided with copies of the records which it has requested in its FOIA request described in paragraph 13 above.

35. WHFF is directly and adversely affected and aggrieved by Defendant BLM's failure to provide responsive records to its August 13, 2018, FOIA request described above.

36. WHFF has been required to expend costs and to obtain the services of a law firm, consisting of attorneys, law clerks, and legal assistants, to prosecute this action.

37. WHFF is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA 5 U.S.C. § 552(a)(4)(E).

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter Judgment for WHFF, providing the following relief:

1. Declare Defendant BLM has violated FOIA by failing to provide WHFF with all non-exempt records responsive to its August 13, 2018, FOIA request.

2. Declare Defendant BLM has violated FOIA by failing to complete an adequate

search for records responsive to WHFF's August 13, 2018, FOIA request.

3. Direct by injunction that Defendant BLM perform an adequate search for records responsive to its August 13, 2018, FOIA request, and provide WHFF with all non-exempt responsive records to WHFF's August 13, 2018, FOIA request.

4. Grant WHFF's costs of litigation, including reasonable attorney fees, as provided by FOIA, 5 U.S.C. § 552(a)(4)(E); and,

5. Provide such other relief as the Court deems just and proper.

DATED: This 23<sup>rd</sup> day of July, 2019.

Respectfully submitted,

/s/  
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